



The Attorney General of Texas

October 13, 1981

MARK WHITE
Attorney General

Supreme Court Building
P.O. Box 12548
Austin, TX. 78711
512/475-2501

1607 Main St., Suite 1400
Dallas, TX. 75201
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

1220 Dallas Ave., Suite 202
Houston, TX. 77002
713/650-0666

806 Broadway, Suite 312
Lubbock, TX. 79401
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

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Mr. R. B. Hall
Executive Director
Texas Board of Examiners in the
Fitting and Dispensing of Hearing
Aids
1212 Guadalupe
Austin, Texas 78701

Opinion No. MW-376

Re: Construction of section
12B(c) of article 4566,
V.T.C.S.

Dear Mr. Hall:

Senate Bill No. 604, which became effective on September 1, 1981, amends article 4566-1.01 et seq., V.T.C.S., by adding, inter alia, section 12B. Section 12B is entitled "Consumer Information and Complaints." Subsection (c) thereof provides that:

The [Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids] shall establish guidelines for a 30-day trial period on every hearing aid purchased from a licensed hearing aid fitter and dispenser.

Senate Bill No. 604 also amends section 1 of article 4566-1.01 by adding subsection (g), which defines "30-day trial period" as "the period in which a person may cancel the purchase of a hearing aid."

Your questions involve section 12B(c). You ask:

1. Does the law say that the dispenser must use the guidelines and give a 30-day trial period on every hearing aid he sells, or
2. Does it mean that the dispenser is obligated only to make the guidelines known letting the consumer opt to use them or not, or
3. Is it the board's responsibility simply to draw up the guidelines and make every dispenser aware that if he chooses to make available a 30-day trial period, these are the guidelines he must follow?

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids regulates the business of fitting and dispensing hearing aids in this state. Anyone who desires to engage in this business must pass an examination given by the board and secure a license from it. V.T.C.S. art. 4566-1.06. Licensees are obliged to abide by the provisions of article 4566-1.01 et seq. Those who violate these provisions may have their licenses revoked or suspended, be placed on probation, or be reprimanded. V.T.C.S. art. 4566-1.10.

It appears that you are asking, in effect, whether section 12B(c) includes an element of choice. In other words, does a hearing aid fitter and dispenser have the right to decide whether to provide a 30-day trial period on a hearing aid that he sells and, if so, may he follow the board's guidelines or not, at his will?

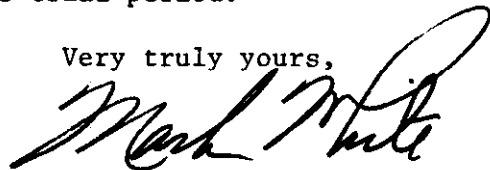
In our opinion, section 12B(c) contains no such element of choice. We believe its plain language indicates that the intent of the legislature was to require all hearing aid fitters and dispensers to provide a 30-day trial period on every hearing aid they sell. We further believe that the section imposes a duty on the board to develop reasonable guidelines for the administration of this trial period and, moreover, that all fitters and dispensers are obliged to adhere to these guidelines.

We therefore answer your first question in the affirmative and your second and third questions in the negative.

S U M M A R Y

Section 12B(c) of Senate Bill No. 604, which amends article 4566-1.01 et seq., V.T.C.S., requires that all hearing aid fitters and dispensers provide a 30-day trial period on every hearing aid they sell, and that they abide by guidelines drafted by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids for the administration of this trial period.

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Jon Bible
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Rick Gilpin
Jim Moellinger
Peter Nolan